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10/554,003	01/12/2006	Detlef Renner	5038.1012	5154

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EXAMINER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/554,003
Filing Date: January 12, 2006
Appellant(s): RENNER, DETLEF

William C. Gehris
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 31, 2008 appealing from the Office action mailed December 11, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5743375	Shyr et al.	4-1998

(9) Grounds of Rejection

Claim Rejections - 35 USC § 102

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17, 18, 20-25, 28-32, 34, and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Shyr et al.

The claimed structural elements are clearly depicted on the previously attached cover sheet and drawing figure 2, with one exception, pneumatic lifting (as indicated 91) was in error, however, the lifting chain device 71 contains eccentric cams 34 and 35 which perform the lifting function.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 19 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shyr et al.

Shyr et al. teach the claimed invention except for having the conveyor integrated into the floor and using a hydraulic means to lift his chain conveyor. In both instance, it would have been an obvious matter of design choice as to what type of known lifting device is used or on what type of surface the device is placed based on the exact design parameters of the specific invention at hand. Such design parameters would depend on (a)the space available for the device, (b)the weight of the articles and (c)the power required to raise the chains: all of which are examples of these considerations which do not carry any patentable weight based on the claimed language.

(10) Response to Argument

The mere claiming of a "gas turbine" in front of a conveyor does not add a patentable departure from the device of Shyr et al. Since the claim does not positively reciting a gas turbine, albeit a smaller version (no size claimed) than what the examiner believes is intended by the applicant. The same argument holds true for the method claims.

The examiner argues that the drawings of the applicant show a gas turbine as reference numeral 11, but could easily be any size or any weight. Merely stating that reference numeral 11 is a gas turbine is not a sufficient patentable departure (***see MPEP excerpt below***).

RE the additional comments with respect to the lack of a lifting device as indicated as "91" on reference. The examiner does acknowledge that "91" is not mentioned in the specification, however, the chain 71 is lifted as recited in specification (bottom of column 2-top of column 3) by eccentric sprockets 34 and 35.

SEE MPEP SECTION 2115 (Material or Article worked upon by Apparatus)

"Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim." *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, "[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims." *In re Young*, 75 F.2d *>996<, 25 USPQ 69 (CCPA 1935) (as restated in *In re Otto*, 312 F.2d 937, 136 USPQ 458, 459 (CCPA 1963)).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

/Douglas A Hess/

Primary Examiner, Art Unit 3651

Conferees

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